

Notice of Allowability	Application No.	Applicant(s)
	10/053,328	HUANG ET AL.
	Examiner	Art Unit
	Mohammed Hasan	2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS**. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to ____.
2. The allowed claim(s) is/are 1 - 23.
3. The drawings filed on 16 January 2002 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None
 of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

5. Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) The translation of the foreign language provisional application has been received.
6. Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. CORRECTED DRAWINGS must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached 1) hereto or 2) to Paper No. ____.
 - (b) including changes required by the proposed drawing correction filed ____, which has been approved by the Examiner.
 - (c) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. ____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. ____.
5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. ____.	6 <input type="checkbox"/> Examiner's Amendment/Comment
7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance
	9 <input type="checkbox"/> Other ____.

Georgia Epps
Georgia Epps
Supervisory Patent Examiner
Technology Center 2800

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1- 23 are drawn to an electro – optical device, classified in class359, subclass 245.
 - II. Claims 24 – 25 are drawn to a method of forming an optical device, classified in class 438, subclass 319.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product electro – optical device, can be made materially different process (e.g., a surface micro-machining technique).
3. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Bo – In Lin on September 15,2003 a provisional election was made without traverse to prosecute the invention of I, claims 1-23. Affirmation of this election must be made by applicant in replying to this Office

action. Claims 24- 25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

EXAMINER'S AMENDMENT

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bo – In Lin on September 15, 2003.

Cancel the claims 24 – 25.

Oath/Declaration

7. Oath and declaration filed on 1/16/2002 is accepted.

Allowable Subject Matter

8. Claims 1- 23 are allowed.
9. The following is an examiner's statement of reasons for allowance: The prior art taken either singularly or in a combination fails to anticipate or fairly suggest the limitations of the independent claims, in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims 1 and 21 , for example which include an optical device comprising : two face – to – face freestanding membranes each supported near a top surface on one of two bonded substrates for defining a resonant cavity between the two membranes and each of substrates having an entire bulk portion opposite the cavity etched off as a bulk micro-machining opening extended from each of the membranes through a bottom surface of the substrates .
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The closest prior art Flanders (6,373,632 B1) a tunable Fabry-perot filter includes an optical cavity bonded by a stationary reflector and a deformable or movable membrane reflector. Huang et al (US 2002/0054416 A1) discloses an array of multi - channel optical attenuating devices. Goossen et al (5,500,761) discloses a method and apparatus for modulating an optical signal using a micromechanical modulator are disclosed.

11. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

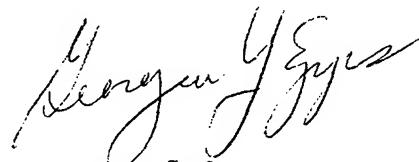
Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammed Hasan whose telephone number is (703) 306-0089. The examiner can normally be reached on M-TH, 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on (703) 308-4883. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MH
September 16, 2003



Georgia Epps
Supervisory Patent Examiner
Technology Center 2800